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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,652	03/01/2002	Ajay Kumar	5681-11900	7886

7590 10/24/2005

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EXAMINER	
LIM, KRISNA	

ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/087,652	KUMAR ET AL.	
	Examiner	Art Unit	
	Krisna Lim	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 March 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 1-36 are presented for examination.

2. The title of the invention is neither descriptive nor precise. A new title is required which should include, using twenty words or fewer, claimed features that differentiate the invention from the Prior Art. The title should reflect the gist of or the improvement of the present invention.

3. Claims 1, 10, 19, 25 and 31 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There are two types of "session data". One is "a primary state of session data" while the other one is "a client state of the session data". It is unclear what kind of session data that the applicants refer to in the subsequent session data. At this point and for the purpose of examination, Examiner considers that "the session data" is "a primary state of session data."

4. 35 U.S.C. § 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

5. Claims 31-36 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter "software instructions". Applicants are recommended to change this language to "software instructions executable by a computer". Note: It is true that an article of manufacture is a statutory category of the invention (2107.01 of the MPEP), however the claimed invention is directed to the software instructions executable, which is not a statutory subject matter because this

software instructions is clearly claimed that they are executable by the computer. See section 2106 of the MPEP.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 10, 19, 25 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 19, 27 and 35 respectively of copending Application No. 10/087,225. Although the conflicting claims are not identical, they are not patentably distinct from each other because these two applications are directly to a computer system comprise substantially the same elements such as a distributed store, a first one of the application servers and the feature of synchronize the primary state with the client state according to a set of attributes. And the difference between this present application and the co-pending application serial No. 10/087,225 is how this set of attributes is configured or determined. For example, the present application uses the first application server to configured to provide a set of attribute of the session data while the co-pending application serial No. 10/087,225 uses the system is configured to compare the client

state to a benchmark of the client state to determine a subset of the attribute. It would have been obvious to one of ordinary skill in the art to recognize that such difference between these two applications is a matter of how to generate the set of attribute s of the session data.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable Bauer [U.S. Patent No. 5,884,325]. Applicant submitted this reference.

10. Bauer disclose (e.g., see Figs. 1-6B) the invention substantially as claimed. Taking claims 1, 10, 19 and 25 as exemplary claims, the reference discloses a distributed store (central database, col. 2 (line 24) comprising a primary state of session data (value of data (e.g., state of information, emphasis added, col. 3 (line 36), an update log of all operation (col. 3, line 61)) in shared database (central database or synchronized database) during synchronization process (cols. 2, 3 and 7) accessible by a plurality of application servers (10, server source 100 and sever destination 200 Figs. 5A and 5B, cols. 8-10), wherein the session data comprises a plurality of attributes (value of the data items, col. 2; an update log, col. 3, line 61), and a first one of the application server comprising a client state of the session data accessible by one or more processes (col. 6, lines 13-17); wherein the first application server is configured to provide a set of attribute of the session data for synchronizing the primary state with the

client state, wherein the first application server is configured to exclude from the set immutable attributes of the session data (see cols. 2 and 6-10); and wherein the distributed store is configured to synchronize the primary state with the client state according to the provided set of attributes (e.g., see cols. 2 and 6-10).

11. While Bauer discloses a database synchronizer to synchronize tabular databases between computers by updating the value in the data field of the database or refresh those data, Bauer does not explicitly mention that his value in the data filed that are updated or refreshed by the values from the client are the primary states. To the extent of the claimed language, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize that Bauer's values are obviously the primary state of the claims.

12. As to claims 2-4, 11-13, 20-21, 26-27, 31 and 33, while Bauer discloses the "smart differencing" technique synchronize the databases in order to minimize storage, Bauer does not explicitly mention that his "smart differencing" technique exclude some data filed (attribute). It would have been obvious to one skill in the art to recognize that such specific of excluding some attributes would have been a matter of programming choice. Moreover, the "smart differencing" technique would obviously have the excluding features in the technique in order to minimize the storage.

13. As to claims 5-9, 14-18, 22-24, 28-30, 32 and 34-36, While Bauer discloses a programming technique that includes a lot of different steps and procedures of comparing, updating, etc. (see Figs. 5A and 5B), Bauer does not explicitly mention that: a) his values or refresh data are include a Java classes; b) his comparing is a binary comparison procedure; and c) using benchmark of the client state to determine or compare. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize that specific features or procedures would have been a matter of programming choice because using a Java language instead of other available language

would have been a matter of choice. Moreover, using either binary comparison or tree comparison and compare to whatever value or number or condition are also a matter of programming choice too.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references are cited in the Form PTO-892 for the applicant's review.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisna Lim whose telephone number is 571-272-3956 The examiner can normally be reached on Monday to Wednesday and Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KI

September 21, 2005

KRISNA LIM
PRIMARY EXAMINER